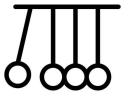


Minority of Age In Criminal Law In Türkiye and The Criminal Responsibility of Children

LAW

ELAY DERİN ULAŞ



Abstract

This study examines in detail the concept of minority age and the criminal responsibility that children bear within the scope of Turkish criminal law. According to Article 31 of the Turkish Penal Code (TCK), age groups are defined concisely to determine the levels of criminal responsibility of children. Children between the ages of 0 and 12 bear no criminal responsibility at all; only protective and supportive measures may be applied to them. For those between 12 and 15, if the child is capable of understanding the legal meaning and consequences of the act, a reduced sentence is imposed; otherwise, only protective measures are applied. Those between 15 and 18 are considered more responsible, but still receive reduced penalties compared to adults.

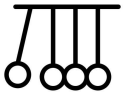
Under Turkish law, children fall under the umbrella that was established by the United Nations Convention on the Rights of the Child as: *“Every human being below the age of 18 years is a child.”* To protect and rehabilitate children, the Child Protection Law No. 5395 was enacted in 2005. This law provides protective and supportive measures such as education, counseling, health, care, and shelter for children who have been dragged into crime or who are in need of protection. Hence, trials are conducted before the Child Courts or the High Criminal Courts for Children, based on the principle of “the best interest of the child.”

On the other hand, international law also adopts this approach, emphasizing education, rehabilitation, and social measures rather than punishment. However, despite the strong legal framework, significant problems persist in practice. The lack of Child Courts in every province, insufficient numbers of trained professionals (police, pedagogues, social workers), poor institutional coordination, and lack of family cooperation hinder the achievement of the law’s objectives. The report offers reform recommendations such as expanding Child Courts nationwide, training expert personnel, introducing family support programs, and strengthening community-based rehabilitation solutions. The main goal is to reintegrate the child into society through education and support rather than punishment.

The Concept of the Child and Legal Framework

A child, in biological terms, is an individual in the developmental stage between birth and puberty. Legally, according to the UN Convention on the Rights of the Child, *“every human being below the age of 18 is a child,”* and this is also accepted in Turkish law. In more detail: between 0 and 12, there is no criminal responsibility; between 12 and 15, there is limited responsibility if the child understands the act’s meaning; and between 15 and 18, responsibility is broader, but penalties differ from those applied to adults. Article 31 of the Turkish Penal Code clearly illustrates these age groups.

To put into perspective, a 17-year-old cannot vote but can testify in court. This means that legally, children do not have full capacity to act. Moreover, according to Articles 335 and



following of the Turkish Civil Code, a child is under parental custody and cannot independently perform legal actions such as signing contracts or filing lawsuits. Nevertheless, they possess fundamental human rights such as the right to life, health, education, shelter, and protection from violence which is all considered as given from birth. For instance, a 12-year-old cannot rent a house alone because they lack legal capacity, but it is the state's duty to ensure their right to education. The Constitution of the Republic of Turkey (1982) Articles 41 and 42 require the state to protect children and ensure free and compulsory education.

Furthermore, the Turkish Civil Code addresses custody, alimony, adoption, and guardianship, while the Turkish Penal Code provides for crimes committed against or by children. In 2005, the Child Protection Law was enacted, introducing social service measures such as counseling, education, and shelter for at-risk children.

Looking from a broader scope, in international law, the UN prepared the 1989 Convention on the Rights of the Child, which includes the right to life and development, non-discrimination, the best interests of the child, and the child's right to participation. Article 3 emphasizes the child's best interests; Article 12 establishes the right to express opinions. In addition, the European Convention on Human Rights protects children's rights, and Turkey is a party to ILO Conventions No. 138 and 182 against child labor. Namely, if a 14-year-old child is employed full-time in a factory, it violates both national labor laws and these international conventions. Institutions dealing with children include Child Courts, Family Courts, the Social Services and Child Protection Agency, and Child Rights Monitoring Boards. The Turkish Grand National Assembly also established the "Parliamentary Child Rights Monitoring Commission."

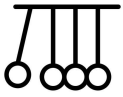
Thus, both national and international law adopt the principle of the child's best interests, ensuring not only their protection but also their participation

Minority of Age in Turkish Criminal Law

Since children's physical and mental development alters from adults, the Turkish Penal Code provides special provisions. Criminal responsibility depends on the child's ability to comprehend the meaning and consequences of the act and to direct their behavior accordingly.

The provisions are divided into two sections:

For children aged 0–12, there is full exemption from punishment. This means that they cannot be prosecuted. Yet, protective and supportive measures can be applied. For example, if a 10-year-old commits theft, no sentence is given, but the family may receive counseling, and the child can be referred to social services.



For children aged 12–15, if they cannot understand the meaning and consequences of their actions, instead of punishments, measures are imposed. If they can, a reduced sentence applies. Nonetheless, reduction ratios vary: aggravated life imprisonment becomes 12–15 years, life imprisonment 9–11 years, and other penalties are halved. In the case where a 14-year-old intentionally injures someone and expert reports confirm understanding of the act, they receive half the adult penalty.

On the contrary, children aged 15–18 are presumed capable of understanding; their responsibility is broader but still less than that of adults. For this group, aggravated life imprisonment becomes 18–24 years, life imprisonment 12–15 years, and other prison terms are reduced by one-third to one-half.

If there is doubt about age, official documents are checked; if inconsistent, forensic reports are used. Ambiguities are interpreted in favor of the child. These trials occur in Child or High Criminal Courts for Children. Detention is the last resort, but protective measures are still an utmost priority. Prisons have special educational institutions for children. Under the Child Protection Law, judges can impose counseling, education, health, care, or shelter measures. The aim is to rehabilitate and reintegrate the child into society rather than punish them.

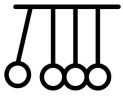
Determination of Children's Criminal Responsibility

The Child Protection Law No. 5395 came into force in 2005. Its main purpose is to ensure the healthy development of children in need of protection or those dragged into crime, through protective, supportive, and educational measures. The law prioritizes the child's best interests and focuses on rehabilitation and reintegration, not punishment.

It outlines five categories of protective and supportive measures: education, counseling, health, care, and shelter. Educational measures ensure the child continues school or attends vocational training to better integrate into social life. In addition, counseling measures provide psychological guidance to the child and family for adaptation. Health measures offer medical or psychological treatment, including rehabilitation for addiction, while care measures place the child under state protection if the family fails to provide care. And the shelter measure provides safe housing such as children's homes.

The sum of these measures ensure the child's safety and wellbeing. Child Courts are responsible for these cases, while investigations are carried out by Child Branch Directorates within law enforcement. During questioning, the child's statement is taken with a psychologist, pedagogue, or social worker present.

However, implementation faces challenges: lack of trained personnel and institutions, insufficient social support to prevent reoffending, and lack of family cooperation. Although



the law is a major step for rights-based child protection, its effectiveness depends on coordination among education, social services, health, and justice institutions. Its purpose remains the same: keeping children away from crime and reintegrating them into society.

The Child Protection Law and Its Implementation

The law aims to secure the rights of children in need of protection or involved in crime, educate and rehabilitate them, and reintegrate them into society, rather than punishing them. It applies to neglected, abused, homeless, or impoverished children, as well as those accused of or harmed by crimes.

To fully protect minors, child courts handle all cases concerning minors under 18. Judges consider age, development level, family, and social environment. Investigations are conducted by trained child police units. Their goal is to prevent secondary victimization and ensure a safe process. Statements are taken with psychologists, pedagogues, or social workers present, who may report on the child's psychological condition to the court.

Courts may impose measures such as health, shelter, care, counseling, or education orders. Throughout, the guiding principle is the child's best interests: protecting development, avoiding punishment, and providing social and educational solutions. But, there are deficiencies such as lack of qualified professionals, absence of child courts in some areas (forcing children into adult justice), and noncompliance by families due to poverty or ignorance. In such cases, protective measures cannot be sustained.

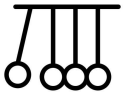
Ergo, successful implementation requires joint effort by justice, health, education, and social services. The ultimate goal is healthy development, prevention of crime, and reintegration into society.

Criminal Responsibility of Children in International Law

International law bases the criminal responsibility of children on the principle of the best interests of the child, focusing on education and rehabilitation rather than punishment.

The UN Convention on the Rights of the Child, particularly Articles 37 and 40, regulates children's interaction with the justice system: torture or inhumane treatment is prohibited; life imprisonment and death penalty for those under 18 are banned; legal assistance and family contact are guaranteed. States are required to set a reasonable minimum age of criminal responsibility where very low ages are unacceptable.

The 1985 Beijing Rules establish international standards for juvenile justice: the goal is education, social measures, and alternatives to punishment. The Rules emphasize that the minimum age of criminal responsibility should be "*not too low*."



The 1990 Havana Rules define minimum standards for youths deprived of liberty, emphasizing community-based support and stating that detention must be a last resort and for the shortest possible time.

The European Convention on Human Rights does not specify an age but through European Court of Human Rights (ECHR) rulings has set standards ensuring pedagogical support and proper questioning conditions.

Globally, minimum ages vary: UK 10, Netherlands and Germany 14, Scandinavian countries 15, China and Japan 14. All adopt the principles of rehabilitation, education, and equality regardless of gender, ethnicity, or social background. Thus, international law requires the minimum age to be reasonably high, deprivation of liberty to be a last resort, and rehabilitation to be the main goal.

Problems in Practice in Türkiye

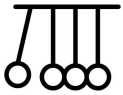
There are not enough Child Courts in every province, leading some children to be tried in adult courts. Moreover, there are insufficient trained professionals to work with children; Child Police Departments exist but lack qualified staff, which may cause secondary victimization. So, there is also a lack of child-friendly practices: statements are sometimes taken without psychologists or pedagogues, violating international standards. Families sometimes oppose measures like counseling or education, and economic hardship or indifference prevents compliance. As a result, children remain vulnerable to reoffending or exploitation.

Coordination among social, educational, and health institutions is weak. Rehabilitation and special education facilities are limited, and data collection and transparency are inadequate. Without reliable statistics, policy-making and monitoring become difficult. Because of these shortcomings, protective measures are often short-term; once lifted, children return to risky environments. Society's stigmatization of "delinquent children" further obstructs reintegration, especially in smaller towns.

Children's voices are rarely included in processes, despite international standards requiring their participation. Consequently, although Türkiye has a strong legal framework on paper, practical implementation is hindered by lack of resources, institutional cooperation, family support, and social prejudice. Achieving genuine progress requires long-term social policies, family support programs, more trained professionals, and stronger institutional coordination along with time and commitment.

Reform Needs and Recommendations

Since some provinces still lack Child Courts, child-specific justice mechanisms must be established nationwide to ensure accessibility. More trained personnel should be appointed



to Child Police Departments, and social service centers, shelters, and counseling units should be increased to balance regional disparities. Judges, prosecutors, police, and prison staff working with children should receive regular training in child rights, trauma-informed approaches, and communication. Court decisions should be made based on joint reports by experts from multiple disciplines.

Economic hardship being a factor in delinquency, financial support and compulsory family counseling programs should be expanded. Children's reintegration must include compensatory education programs, workshops, sports, and cultural activities. Punishment should be replaced by creative and productive programs. Special rehabilitation services should be established for children with substance abuse or abuse histories, providing continuous psychosocial support.

Public awareness campaigns, school programs, and media responsibility are also essential to eliminate social stigma. The privacy of children must be protected; their names and images should never be disclosed. Schools should systematically teach child rights to raise awareness from an early age.

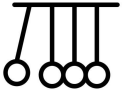
The Child Protection Law should be updated to close implementation gaps, strengthen monitoring of measures, and mandate inter-agency cooperation. Community-based probation programs should be expanded as alternatives to imprisonment, aligning with international standards.

Conclusion

The concept of minority of age and children's criminal responsibility in Turkey rests on a strong legal foundation consistent with national and international standards and the principle of the child's best interests. The graded responsibility system in the Penal Code and the rehabilitative approach of the Child Protection Law aim to educate and reintegrate rather than punish. However, implementation challenges, such as limited Child Courts, insufficient professionals, poor coordination, and family or socioeconomic obstacles, reduce the system's effectiveness.

To achieve the intended goals, reforms must go beyond legislation: expand Child Courts nationwide, increase and train expert staff, enforce inter-institutional cooperation, and combat social prejudice through public education.

Ultimately, the success of the child justice system depends not merely on written laws but on effective collaboration among social services, justice, health, and education sectors, as well as family support. The true objective is to support children's healthy development, keep them away from crime, and ensure reintegration into society through community-based, non-punitive measures. Achieving this requires long-term social policy and sustained implementation.



Resources

1. Türk Ceza Kanunu (TCK)
<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5237&MevzuatTur=1&MevzuatTertip=5>
2. Çocuk Koruma Kanunu (5395 Sayılı Kanun)
<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5395&MevzuatTur=1&MevzuatTertip=5>
3. Birleşmiş Milletler Çocuk Haklarına Dair Sözleşme (1989),
<https://www.unicef.org/turkiye/raporlar/bm-%C3%A7ocuk-haklar%C4%B1na-dair-s%C3%B6zle%C5%9Fme>
4. Avrupa İnsan Hakları Sözleşmesi (AİHS),
<https://www.coe.int/tr/web/conventions/full-list/-/conventions/treaty/005>
5. ILO Sözleşmeleri (138 ve 182) <https://www.ilo.org/ankara/lang--tr/index.htm>
6. Türkiye Cumhuriyeti Anayasası (1982),
<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=2709&MevzuatTur=1&MevzuatTertip=5>
7. Türk Medeni Kanunu,
<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=4721&MevzuatTur=1&MevzuatTertip=5>
8. BM Pekin Kuralları (1985),
<https://www.ohchr.org/en/instruments-mechanisms/instruments/un-standard-minimum-rules-administration-juvenile-justice>
9. BM Havana Kuralları (1990),
<https://www.ohchr.org/en/instruments-mechanisms/instruments/un-rules-protection-juveniles-deprived-their-liberty>